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6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
8 **SAN FRANCISCO DIVISION**
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 DANIEL SANTIAGO,

14 Defendant.
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Case No. 12-CR-00665 RS (NC)

**Order Denying Motion for Release
on Bail**

18 This Court, on defendant Daniel Santiago's motion for release on bail, held a
19 detention hearing under 18 U.S.C. § 3142(f) on May 15, 2013. Santiago is charged by
20 indictment with being a felon in possession of a firearm in violation of 18 U.S.C. §
21 922(g)(1). In a trial before District Court Judge Richard Seeborg that ended May 7,
22 2013, the jury could not reach a unanimous verdict and the Court declared a mistrial.
23 The government has stated that it will try again, and a new trial date is set for August 5,
24 2013.

25 This order denies Santiago's motion for release, concluding that there has not
26 been a change in circumstances that alters the Court's previous analysis that no condition
27 or combination of conditions will reasonably assure (1) future appearances of the
28 defendant, and (2) the safety of the community.

1 *Motamedi*, 767 F.2d 1403, 1408 (9th Cir. 1985). Only in rare circumstances should
2 release be denied, and doubts regarding the propriety of release should be resolved in the
3 defendant's favor. 767 F.2d at 1405.

4 In this case, the government asserts that there is no combination of conditions of
5 release that would "reasonably assure" future appearances of Santiago and assure the
6 "safety of any other person or the community." There is no presumption of detention
7 that applies in this case.

8 Almost all of the detention factors previously considered by the Court in this case
9 are unchanged. The charge is the same; the history of the defendant is the same; and the
10 danger to the community from release is the same. The only factor that may have
11 changed is the weight of the evidence, which is the least important factor.

12 At the May 15 detention hearing, the parties agreed that the jury's deliberations
13 were 11-1 in favor of conviction and the parties agreed that the Court could consider this
14 information in weighing the detention question. Neither party could point to a
15 controlling authority. In *United States v. Gebro*, 948 F.2d 1118, 1122 (9th Cir. 1991),
16 the Ninth Circuit, reviewing a detention order against a defendant who was facing a
17 retrial after his first conviction was reversed, found that a defendant's knowledge that a
18 jury had previously rejected his defense made it more likely that he would flee. By
19 analogy here, Santiago's knowledge that the first jury to hear his case was 11-1 against
20 him could make him more likely to flee before retrial.

21 On balance, the Court does not need to speculate about what a second jury will
22 decide. Based on the totality of the evidence presented, the Court is not persuaded that
23 the weight of the evidence has shifted in Santiago's favor. Therefore, Santiago's motion
24 for release is denied.

25 IT IS SO ORDERED.

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27 DATE: May 24, 2013

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NATHANAEL M. COUSINS
United States Magistrate Judge